



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Robert Quanstrom
Assistant Vice President
Locomotive Maintenance
Wells Fargo Rail
Robert.L.Quanstrom@wellsfargo.com

Re: Finding of Violation
Wells Fargo Rail
Rosemont, Illinois

Dear Robert Quanstrom,

The U.S. Environmental Protection Agency (EPA) is issuing the enclosed Finding of Violation (FOV) to Wells Fargo Rail (WFR, or you) for violating Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and regulations promulgated pursuant to Section 213(a)(5) of the CAA, 42 U.S.C. § 7547(c), that are codified at 40 C.F.R. Part 92 (Control of Air Pollution from Locomotives and Locomotive Engines), 40 C.F.R. Part 1033 (Control of Emissions from Locomotives), and 40 C.F.R. Part 1068 (General Compliance Provisions for Engine Programs). As summarized in the attached FOV, EPA has determined that WFR has failed to comply with the cited provisions by: introducing into commerce new locomotives that were not covered by an EPA-issued Certificate of Conformity; failing to ensure that certain emission-related maintenance was performed; failing to maintain locomotive maintenance records; and failing to upgrade the locomotive tier as required.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call at (312) 886-5112 or email at chatfield.ethan@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Nathan Frank
Chief, Air Enforcement and Compliance Assurance Section IL/IN

Enclosure

cc:

Kent Mohr, Manager
Compliance Section
Bureau of Air
Illinois Environmental Protection Agency
Kent.Mohr@Illinois.gov

4. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1) prohibits manufacturers of new locomotives from importing, selling, offering for sale, introducing or delivering for introduction into commerce (or causing any of the foregoing with respect to) any new locomotive unless the locomotive is covered by a Certificate of Conformity (COC) issued by EPA under regulations prescribed by the CAA. *See* Section 213(d), 42 U.S.C. § 7547(d) (making Section 203 of the CAA applicable to new locomotives). *See also* 40 C.F.R. Part 1068.101(a)(1).
5. On April 16, 1998, EPA promulgated emission standards and associated regulatory requirements for the control of emissions from locomotives and locomotive engines. *See* 40 C.F.R. Part 92. 63 Fed. Reg. 18998.
6. On June 30, 2008, EPA promulgated revised emission standards and regulatory requirements for locomotives and locomotive engines. *See* 40 C.F.R. Part 1033. 73 Fed. Reg. 37197.
7. On June 29, 2021, EPA migrated the regulatory requirements from 40 C.F.R. Part 92 to 40 C.F.R. Part 1033, with additional testing and compliance provisions in 40 C.F.R. Parts 1065 and 1068. *See* 86 Fed. Reg. 34373. The Tier 0, Tier 1, and Tier 2 emissions standards originally adopted in Part 92 are now identified in 40 C.F.R. Part 1033, appendix I.
8. Locomotive manufacturers/remanufacturers, as well as owners and operators of locomotives subject to the requirements of 40 C.F.R. Part 1033, and all other persons, must observe the provisions of Part 1033, the requirements and prohibitions of 40 C.F.R. Part 1068, and the provisions of the CAA. 40 C.F.R. § 1033.601. The provisions of Part 1068 apply for locomotives as specified in that Part, with certain exceptions not applicable here. *Id.* *See also* 40 C.F.R. § 1033.15(b) (“the requirements and prohibitions of [Part 1068] apply to everyone, including anyone who manufactures, remanufactures, imports, maintains, owns, operates any of the locomotives subject to [Part 1033]”).
9. 40 C.F.R. § 1033.1(a) states that specified emission standards begin to apply each time a locomotive or locomotive engine is originally manufactured or otherwise becomes new (defined in § 1033.901). Further, the requirements of this part continue to apply as specified after locomotives cease to be new. *Id.* *See also* 40 C.F.R. § 92.1.
10. 40 C.F.R. § 1068.30 states that “‘new’ has the meaning we give it in the standard-setting part. Note that in certain cases, used and remanufactured engines/equipment may be ‘new’ engines/equipment.” 40 C.F.R. Part 1033 is the “standard-setting part” applicable to this matter.
11. 40 C.F.R. § 1033.901 states that “a locomotive or engine becomes **new** if it is remanufactured or refurbished ...” (Emphasis added). The definition of a new locomotive also states that “[l]ocomotives and engines that were originally manufactured before January 1, 1973 are not considered to become new when remanufactured unless they have been upgraded” (as defined in Part 1033).
12. 40 C.F.R. § 1033.901 defines “Upgrade” as one of the following types of remanufacturing: (1) repowering a locomotive that was originally manufactured prior to January 1, 1973; (2) refurbishing a locomotive that was originally manufactured prior to January 1, 1973 in a manner that is not freshly manufacturing; or (3) modifying a locomotive that was originally manufactured prior to January 1, 1973 (or a locomotive that was originally manufactured on or after January 1, 1973, and that is not subject to the emission standards of this part), such that it is intended to comply with the Tier 0 standards.

13. 40 C.F.R. § 1033.901 defines “Remanufacture” as one of the following: (1)(i) to replace, or inspect and qualify, each and every power assembly of a locomotive or locomotive engine, whether during a single maintenance event or cumulatively within a five-year period; (ii) to upgrade a locomotive or locomotive engine; (iii) to convert a locomotive or locomotive engine to enable it to operate using a fuel other than it was originally manufactured to use; (iv) to install a remanufactured engine or a freshly manufactured engine into a previously used locomotive; or (v) to repair a locomotive engine that does not contain power assemblies to a condition that is equivalent to or better than its original condition with respect to reliability and fuel consumption; or (2) remanufacture also means the act of remanufacturing. *See also* 40 C.F.R. § 92.2 (2020).
14. 40 C.F.R. §§ 1033.101, 1033.102, and Part 1033 Appendix I specify the nitrogen oxides (NO_x), particulate matter (PM), hydrocarbon (HC), carbon monoxide (CO), and smoke (opacity) emission standards that apply to new line-haul and switcher locomotives during the useful life of the locomotive. *See also* 40 C. F.R. § 92.8 (2020).
15. 40 C.F.R. § 1033.115 states that “[l]ocomotives that are required to meet the emission standards of [Part 1033] must meet the requirements of this section. These requirements apply when the locomotive is new (for freshly manufactured or remanufactured locomotives) and continue to apply throughout the useful life.” These requirements include...(g) all new locomotives must be equipped with automatic engine stop/start, and all new locomotives must be designed to allow the engine(s) to be restarted at least six times per day without causing engine damage that would affect the expected interval between remanufacturing; and (h) Tier 1 and later locomotives must be equipped with MW-hr meters (or the equivalent) consistent with the specifications of § 1033.140. *See also* 40 C. F.R. §§ 92.7 and 92.8 (2020).
16. 40 C.F.R. § 1033.125 (Maintenance instructions) states that the owner of each new locomotive shall be provided written instructions for properly maintaining and using the locomotive, including the emission-control system. Such instructions are required to contain a notification that owners and operators must comply with the requirements of subpart I of this part 1033 (Requirements of Owners and Operators). *See also* 40 C.F.R. § 92.211(a) (2020).
17. 40 C.F.R. § 1033.801 (Applicability) states that the requirements of the Subpart I are applicable to “railroads and all other owners and operators of locomotives subject to the provisions of [Part 1033], except as otherwise specified. The prohibitions related to maintenance in § 1033.815 also applies to anyone performing maintenance on a locomotive subject to the provisions of [Part 1033].”
18. The remanufacturing requirements contained in 40 C.F.R. §1033.805 state that a locomotive owner/operator should first “see the definition of “remanufacture” in § 1033.901 to determine if they are remanufacturing their locomotive or engine” and then “see the definition of “new” in § 1033.901 to determine if remanufacturing their locomotive makes it subject to the requirements of Part 1033. If the locomotive is considered to be new, it is subject to the certification requirements of Part 1033, unless it is exempt under subpart G of this part.”
19. 40 C.F.R. § 1033.805(c) states that you may comply with the certification requirements of Part 1033 for your remanufactured locomotive by either obtaining your own certificate of conformity as specified in Subpart C of Part 1033 or by having a certifying remanufacturer include your locomotive under its certificate of conformity. In either case, your remanufactured locomotive must be covered by a certificate before it is reintroduced into service. 40 C.F.R. § 1033.805(f)

states that failure to comply with the requirements of 40 C.F.R. Part 1033, Subpart I is a violation of 40 C.F.R. §1068.101(a)(1).

20. Unless it has a valid COC for its model year and the required label, 40 C.F.R. § 1033.601(e) provides that the placement of a new locomotive or new locomotive engine back into service following remanufacturing constitutes introduction into commerce and is a violation of 40 C.F.R. § 1068.101(a)(1). *See also* 40 C. F.R. § 92.1103(a) (2020).
21. 40 C.F.R. § 1033.815(a) states that “all owners of locomotives subject to the provisions of this part must ensure that all emission-related maintenance is performed on the locomotives, as specified in the maintenance instructions provided by the certifying manufacturer/remanufacturer in compliance with §1033.125 (or maintenance that is equivalent to the maintenance specified by the certifying manufacturer/remanufacturer in terms of maintaining emissions performance). *See also* 40 C.F.R. § 92.1004(a) (2020).
22. 40 C.F.R. § 1033.815(c) states that owners or operators must use good engineering judgment when performing maintenance of locomotives subject to the provisions of this part. You must perform all maintenance and repair such that you have a reasonable technical basis for believing the locomotive will continue (after the maintenance or repair) to meet the applicable emission standards and FELs to which it was certified. *See also* 40 C.F.R. § 92.1004(b) (2020).
23. 40 C.F.R. § 1033.815(d) states that the owner of a locomotive must keep records of all maintenance and repairs that could reasonably affect the emission performance of any locomotive subject to Part 1033, and it must keep these records for eight years. *See also* 40 C.F.R. § 92.1004(c).
24. 40 C.F.R. § 1033.815(f) states that failure to fully comply with this 1033.815 is a violation of 40 C.F.R. § 1068.101(b).
25. 40 C.F.R. § 1068.101(a)(1) states that “[y]ou may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag.”
26. 40 C.F.R. § 1068.101(b)(1) states that you “may not remove or render inoperative any device or element of design installed on or in engines/equipment in compliance with the regulations prior to its sale and delivery to the ultimate purchaser. You also may not knowingly remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser. This includes, for example, operating an engine without a supply of appropriate quality urea if the emission control system relies on urea to reduce NOx emissions or the use of incorrect fuel or engine oil that renders the emission control system inoperative.”

Background

27. WFR is a major railcar and locomotive leasing company that owns locomotives operated by lessors throughout the United States.

28. WFR is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
29. On September 9, 2021, EPA issued a CAA Section 208 Information Request to WFR (Request).
30. In response to EPA's Request, WFR provided spreadsheets containing available information on locomotives in its fleet (Spreadsheets). The information provided by WFR in response to the Request was only a portion of the information requested. In the Spreadsheets, WFR listed a total of 333 "short-term operating lease" (OPL) locomotives and 667 "long-term net lease" (LTL) locomotives.
31. In the Spreadsheets, WFR listed a total of 186 of the OPL locomotives that did not replace or renew one or more of its fuel injectors within the past 3-year period (conservatively calculated from September 9, 2018 forward), as required by the applicable maintenance instructions for each locomotive subject to an EPA emissions tier in WFR's locomotive fleet.
32. In the Spreadsheets, WFR listed a total of 13 of the OPL locomotives that did not replace or renew one or more of its turbochargers after the end of its useful life, as required by the applicable maintenance instructions for each locomotive subject to an EPA emissions tier in WFR's locomotive fleet.
33. In the Spreadsheets, WFR listed a total of 195 of the OPL locomotives that appeared to be missing emissions-related records, for the purposes of this analysis limited to power assembly, injector, and turbocharger replacement records.
34. In the Spreadsheets, WFR did not provide the majority of the requested emissions-related records for the 667 LTL locomotives in response to EPA's Request.
35. In email correspondence dated May 5, 2022, EPA reiterated its request that WFR, as the owner of the LTL locomotives, provide a copy of "records of all maintenance and repairs that could reasonably affect the emission performance" in accordance with 40 C.F.R. § 1033.815(d). WFR responded on June 23, 2022 that "the lessee is responsible for maintaining the leased locomotives (and maintaining the maintenance records) during the term of the lease," and failed to provide EPA all of the requested records.
36. In the Spreadsheets, WFR provided a list of 757 locomotives that were sold within the past 5 years (i.e. after September 8, 2016), but was unable to provide the requested emissions-related records for these locomotives in response to EPA's Request.
37. In the Spreadsheets, WFR listed 3 LTL locomotives as Tier 1 locomotives. However, the "Remanufacture" date, the "Replacement Engine Manufacture" date, and/or the "Last Power Assembly Replacement" date for these locomotives occurred after January 1, 2010, and should be subject to Tier 1+, not Tier 1.
38. In the Spreadsheet, WFR listed a total of 4 OPL locomotives that were originally manufactured after January 1, 1973, and WFR listed all of the power assemblies as having been replaced after January 1, 2000. Under the "Current EPA Tier," WFR listed these locomotives as having a tier level of "Grandfathered" or it was left blank. Based in its response, it appears that WFR did not obtain a valid COC for these locomotives establishing compliance with the correct EPA Tier emission standard prior to placing the locomotives back into service.

Violations

39. By failing to replace or renew fuel injectors and turbochargers as specified in the maintenance instructions provided by the certifying remanufacturer on each locomotive referenced in Paragraphs 31 and 32 above, WFR failed to ensure that “all emission-related maintenance” was performed in accordance with 40 C.F.R. §§ 92.1004(a) and 1033.815(a).
40. By failing to maintain emissions-related records, such as power assembly, fuel injector, and turbocharger replacement records, WFR failed to ensure that all “emissions-related” records were maintained on locomotives owned by WFR in accordance with 40 C.F.R. § 1033.815(d).
41. WFR placed the locomotives referenced in Paragraph 37 and 38 above, into service without first obtaining a valid certificate of conformity for its model year and the required label in accordance with the requirements at 40 C.F.R. §§ 92.1103(a), 1033.601(e) and 1068.101(a)(1).

Environmental Impact of Violations

42. These violations may result in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar tissue.

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division